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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,975	02/01/2005	Peter Stierle	3185	4618
7590 09/14/2005			EXAMINER	
Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743			MORGAN, EILEEN P	
			ART UNIT	PAPER NUMBER
			3723	
DATE MAILED: 09/14/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/522,975

Applicant(s)

STIERLE ET AL.

Examiner

Eileen P. Morgan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2-1-05</u> . | 6) <input type="checkbox"/> Other: _____ |

-DETAILED ACTION

Specification

The disclosure is objected to because of the following informalities: it is unclear what 'U-bent' means.

Appropriate correction is required.

The abstract of the disclosure is objected to because it is unclear what 'U-bent' means. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, what does U-bent mean? The drive shaft does not appear to be in the shape of a "U". Line 4, what does 'it' refer to? Last line, 'parallel to the housing' is unclear since the housing is three dimensional. Should it be 'parallel to the longitudinal axis of the housing'? Cl. 4, 'that point' is unclear. How do the y 'point'? Do the cams engage the detents of the cover to lock it? This should be stated? What is a pusher button? What is its use? This should be stated. Cl. 6, 'the pusher button lacks antecedence. Also, the pusher button being 'transverse' to the gearbox is unclear,

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since it is unclear which plane is being referenced. Line 3, 'its' refers to what? The 'circumference' lacks antecedence. Line 4, 'it' refers to what? What does 'conveniently accessible' mean? The use of the term 'one finger' is unclear. 'The index finger' lacks proper antecedence, as does 'the operator's hand' and 'the working position'. What position is this? Cl. 6 is totally unclear and is reciting 'how to operate the device' instead of defining the device.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,3,5,6,8,9 rejected under 35 U.S.C. 103(a) as being unpatentable over DE-19914855.

DE-855 discloses a portable power tool with a longitudinal housing (2) and a transverse shaft (5) depending from the longitudinal housing that is rotatably supported by a gear box (3), wherein a protective cover (6) surrounds abrading member and is rotatably adjustable via notches (10, arranged in a semicircle) that engage a cam (12) of a notch lever (14) that extends transversely to the longitudinal axis of housing that is accessible by a users finger. DE'855 does not clearly show the notch lever being pivotable about an axis parallel to longitudinal axis of housing (Fig 2 looks like (14) has a free end and is pivotal about an opposite end, however, Figure 3 appears to show both ends (15) of lever (14) mounted to gear box.) However, the leaf spring mounted

lever of DE'855 appears to work exactly the same as a pivoting lever, as claimed to lock cover into desired position. Therefore, it would have been obvious to one of ordinary skill in the art at time invention was made to use a pivoting biased lever the device disclosed by DE'855 since examiner takes Official Notice of the equivalence of a leaf spring biased lever and a pivoting biased lever for their use in the clamping art and the selection of any one of these known equivalents to bias a cam into a detent to lock an item in place would be within the level of ordinary skill in the art.

Allowable Subject Matter

Claims 4 and 7 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eileen P. Morgan whose telephone number is 571.272.4488. The examiner can normally be reached on Monday-Thursday (Office), Friday (Work at home).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571.272.4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EM
September 8, 2005



EILEEN P. MORGAN
PRIMARY EXAMINER